STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ELI DE'QUENTIN WALTERS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DENISE WALTERS,

Respondent-Appellant,

and

MICHAEL STRIGGLES

Respondent.

UNPUBLISHED
October 3, 2000

No. 220896
Wayne Circuit Court
Family Division
LC No. 97-353883

Before: Murphy, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Respondent-appellant Denise Walters appeals as of right the family court order terminating her parental rights to the minor child, Eli De'Quentin Walters, pursuant to MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j).[1] We affirm.

Upon review of the record, we find that the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 358-362; ___ NW2d ___ (2000); *In re Sours;* 459 Mich 624, 633; 593 NW2d 520 (1999). The conditions that led to the adjudication in this matter were

[1] The parental rights of Michael Striggles, the putative father of Eli Walters, were also terminated by the trial court; however, he has not appealed the order of termination and is not a party to this appeal.

respondent's homelessness and her physical abuse of Eli while she was intoxicated. To assist respondent in rectifying those conditions, a parent agency agreement was entered into whereby respondent was required to obtain and maintain suitable housing, obtain a legal source of income, obtain employment, attend a drug assessment, submit to random weekly drug screens and consistently return negative screens, attend all scheduled visitations, attend parenting classes, maintain regular contact with her case worker, and attend all court hearings.

The record is clear that at the time of the termination hearing, although respondent had made notable progress in her goals toward reunification, she nonetheless did not have suitable housing for the children, she failed to attend domestic violence counseling, and she failed to consistently submit to weekly drug screens and return *all* negative screens. In particular, at the time of the hearing, plaintiff was residing in a one bedroom hotel room that was admittedly unsuitable for children. Although respondent testified that she was following through on an FIA referral for section 8 housing, no documentation had been provided to verify respondent's contention. Moreover, respondent had been provided with referrals for housing since the time her child became a court ward almost two years prior to the date of termination, but respondent decided not to act on those referrals and instead chose to reside with friends and family. Thus, we find respondent's belated efforts at obtaining housing moments before her parental rights were terminated too late.

In addition, respondent failed to attend domestic violence classes to address the physically abusive behavior she displayed toward Eli and the abusive relationship in which she was involved, and her children observed, while residing with Anthony Westcarr, the father of respondent's other minor child. Although respondent repeatedly denied the allegations in the petition that she slapped Eli in the face with a closed fist, she nonetheless admitted that she pulled down his pants and spanked him in the presence of others and in front of the shelter where physically abusive contact with children is expressly prohibited. Further, according to Eli, this was not the first instance where respondent hit him. Thus, given that domestic violence was a condition that led to the initial adjudication in this matter, respondent's failure to attend domestic violence classes or counseling to rectify this condition was an important factor in the termination decision.

Finally, the evidence showed that respondent failed to submit to random, weekly drug screens and demonstrate that she could remain drug and alcohol free. While respondent did provide several negative drug screens over the course of the proceedings, she did not submit to the drug screens on a consistent basis and returned two positive alcohol screens a few months prior to the termination proceeding. Moreover, respondent returned an "unexplained" positive drug screen for cocaine and opiates only a few weeks prior to the termination hearing. Respondent's intoxication at the time she hit Eli was one of the conditions alleged in the initial petition and the record showed that, almost two years later, respondent failed to rectify that condition.

While we acknowledge the emotional bond that respondent established with Eli and though we do not doubt that respondent loved Eli and wanted to be able to care and provide for him, on this record, we conclude that the trial court properly determined that the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that the conditions would be

rectified within a reasonable time considering Eli's age. Further, although a parent's failure to comply with a treatment plan, alone, does not establish neglect or warrant termination, respondent's failure to achieve her treatment plan goals, in conjunction with the clear and convincing evidence that the treatment plan was necessary to improve her neglectful behavior supports termination. *In the Matter of Mason*, 140 Mich App 734, 737; 364 NW2d 301 (1985); *In the Matter of Moore*, 134 Mich App 586, 598; 351 NW2d 615 (1984). Accordingly, the trial court did not err in finding that there was clear and convincing evidence to terminate respondent's parental rights under subsection 19b(3)(c)(i).[2]

Further, we are not convinced that the family court's assessment of the best interests of the children was clearly erroneous. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors, supra* at 363-364. Although there was evidence that Eli was bonded to respondent and that respondent displayed genuine love and affection for her child, in view of the aforementioned circumstances, we find no clear error in the family court's determination that termination was in the child's best interests. *Id*.

Respondent also contends that her trial counsel was ineffective for failing to present evidence on the best interests of Eli. We disagree. An indigent parent involved in a hearing which may terminate her parental rights is entitled to appointed counsel. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). The right to counsel includes the right to competent counsel. *In re Simon, supra*. In analyzing claims of ineffective assistance of counsel at termination hearings, this Court applies by analogy the principles of ineffective assistance of counsel as they have developed in the criminal law context. *Id.* That is, respondent must show that counsel's performance was objectively unreasonable and that respondent was prejudiced by counsel's deficient performance (i.e., but for counsel's deficient representation, the result of the proceeding would have been different). *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Our Supreme Court recently rejected the notion that the best interest clause of subsection 19b(5) imposes a burden of production on the respondent or that it imposes any further burden of proof on the petitioner once the petitioner carried its burden of establishing one or more statutory grounds for termination. *In re Trejo, supra* at 352. Rather, the Court held that once the petitioner proves at least one ground for termination by clear and convincing evidence, the court "shall order termination" unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. *In re Trejo, supra* at 352-354. Thus, in view of the Court's holding that respondents no longer have the burden to present evidence that termination is clearly not in the child's best interests, respondent's trial counsel was not deficient in failing to present such evidence. In any event, as noted above, we conclude that the trial court's assessment of the best interests of the children was not clearly erroneous. Accordingly, we reject respondent's ineffective assistance of counsel claim.

[2] Because the family court properly terminated respondent's parental rights under subsection 19b(3)(c)(i), and only one statutory ground for termination is necessary, we need not address the propriety of termination pursuant to the other grounds cited by the family court. MCL 712A.19b(3); MSA 27.3178(598.19b)(3).

Affirmed.

/s/ William B. Murphy
/s/ Richard A. Griffin
/s/ Kurtis T. Wilder